

REMARKSI. Status of the Application

- Claims 16, 57, 67, 83, 97-103, 104-110, 111-115 and 116 -120 are pending in the above-identified application, of which claims 16, 57, 67, 83, 97, 104, 111 and 116 are independent.
- Claims 16, 57, 67, 83, 97-101, 103-108 and 110 have been amended.

Accordingly, entry of the amendments and the new claims is respectfully requested.

Applicants have amended the claims to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable at this time. The claim amendments have not been submitted for any reason relating to patentability, such as to overcome any one or more of the Examiner's rejections. Indeed, Applicants believe that the Examiner has not established a *prima facie* showing to support any of the Examiner's rejections and, as such, Applicants intend to pursue the subject matter of the previously presented, and of the previously or currently cancelled claims, in one or more continuing applications.

II. Claim Rejections – 35 U.S.C. § 112

The Examiner rejected claims 16, 57, 67, 83, 91, 94, 97, 98, 102-105, 109-112, 116 and 117 under 35 U.S.C. § 112, second paragraph, alleging the claims are indefinite.

The Examiner has not made a *prima facie* showing that any claims are indefinite. Moreover, the Examiner's §112 rejections are moot in light of Applicants' amendments to the claims, which were made for separate reasons. Reconsideration and withdrawal of the rejections are respectfully requested.

III. Claim Rejections – 35 U.S.C. § 101

The Examiner rejected claims 16, 57, 67, 83, 91, 94, 97, 98, 102-105, 109-112, 116 and 117 under 35 U.S.C. § 101 alleging that the claims lack a tangible result.

The Examiner has not made a *prima facie* showing that any claims lack a tangible result. In fact, claims 16, 57, 67, 83, 91, 94, 97, 98, 102-105, 109-112, 116 and 117, as amended, recite “processing orders placed by the trader” and/or “providing the trader with an exclusive trading opportunity,” which provides a tangible result. See AT & T Corp. v. Excel Communications Inc., 172 F.3d 1352, 1356, 50 USPQ2d 1447, 1451 (Fed. Cir. 1999); State Street Bank v. Signature Financial Trust, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed. Cir. 1998), cert. denied, 119 S. Ct. 851 (1999). Accordingly, reconsideration and withdrawal of the rejections are requested.

#### IV. Claim Rejections – 35 U.S.C. § 103

The Examiner rejected claims 16, 57, 67, 83, 91, 94, 97, 98, 102-105, 109-112, 116 and 117 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,618,707 (hereinafter “Gary”) in view of Electronic Business System Reference in IDS (hereinafter “Chang”). The Examiner has not made a *prima facie* showing of obviousness. In summary, every claim has a limitation that is not found in the supplied references.

##### Independent Claims 16 and 57

Independent claims 16 and 57 recite methods and systems that comprise “receiving bid or offer orders placed by a trader; calculating a quantity of orders placed by the trader; qualifying the trader, based on the quantity of orders, for an incentive, in which the incentive provides the trader with *a period of exclusivity during which only orders from the trader are processed*; and processing orders placed by the trader in exclusion of other orders during the period of exclusivity” (emphasis added). Gary fails to disclose or suggest “*a period of exclusivity during which only orders from the trader are processed*,” as in Applicants’ claims 16 and 57.

The Examiner asserts that Gary discusses providing a trader with an exclusive trading opportunity as an incentive at column 4, line 66 to column 5, line 3 and Claim 3. Applicants disagree. At column 4, line 66 to column 5, line 3, Gary discusses providing a “primary market maker” with “a relatively higher portion of the pro rata order volume.” An incentive that provides the trader with “*a period of exclusivity during which only orders from the*

trader are processed,” as recited in claims 16 and 57, is not the same as providing a relatively higher portion of the pro rata order volume, as discussed in Gary.

Nor does Chang disclose or suggest “*a period of exclusivity during which only orders from the trader are processed*,” as in Applicants’ claims 16 and 57.

Thus, neither Gary nor Chang, either taken alone or in combination, discuss or suggest the features of claims 16 and 57. The Examiner has not met his burden of presenting a *prima facie* case of obviousness against claims 16 and 57.

#### Independent Claims 67 and 83

Independent 67 and 83 recite methods and systems that comprise “receiving bid or offer orders placed by a trader; calculating a quantity of orders placed by the trader; *qualifying the trader, based on the quantity of orders, for an incentive, in which the incentive provides the trader with a period of priority* during which orders place by the trader are processed in advance of other orders placed by other traders; and processing orders placed by the trader in advance of other orders during the period of priority” (emphasis added). Gary fails to disclose or suggest “*qualifying the trader, based on the quantity of orders, for an incentive, in which the incentive provides the trader with a period of priority*,” as in Applicants’ claims 67 and 83. Nor does Chang disclose or suggest “*qualifying the trader, based on the quantity of orders, for an incentive, in which the incentive provides the trader with a period of priority*.”

Neither Gary nor Chang, either taken alone or in combination, discuss or suggest the features of claims 67 and 83. Thus, the Examiner has not met his burden of presenting a *prima facie* case of obviousness against claims 67 and 83.

#### Independent Claims 97, 104

Independent claims 97 and 104 recite methods and that comprise, *inter alia*, “qualifying the trader for an incentive, in which the incentive provides the trader with... *a period of exclusivity during which only orders from the trader are processed*...” (emphasis added). Gary fails to disclose or suggest “*a period of exclusivity during which only orders from the trader are processed*,” as in Applicants’ claims 97 and 104.

As discussed above with respect to claims 16 and 57, an incentive that provides the trader with “*a period of exclusivity during which only orders from the trader are processed*,” as recited in claims 97 and 104, is not the same as providing a primary market maker with a relatively higher portion of the pro rata order volume, as discussed in Gary. Nor does Chang disclose or suggest “*a period of exclusivity during which only orders from the trader are processed*.”

Neither Gary nor Chang, either taken alone or in combination, discuss or suggest the features of claims 97 and 104. Thus, Examiner has not met his burden of presenting a *prima facie* case of obviousness against any claims 97 and 104.

#### Independent Claims 111 and 116

Independent 111 and 116 recite methods and systems that comprise “receiving orders from a trader; determining whether the trader qualifies for an incentive for making a market associated with the orders received; and *for a period of time, providing the trader an exclusive trading opportunity as an incentive for making the market*” (emphasis added). Gary fails to disclose or suggest “*an exclusive trading opportunity as an incentive for making the market*,” as in Applicants’ claims 111 and 116.

As discussed above with respect to claims 16 and 57, an incentive that provides the trader with “*an exclusive trading opportunity*,” as recited in claims 111 and 116, is not the same as providing a primary market maker with a relatively higher portion of the pro rata order volume, as discussed in Gary.

Nor does Chang disclose or suggest “*an exclusive trading opportunity as an incentive for making the market*.”

Neither Gary nor Chang, either taken alone or in combination, discuss or suggest the features of claims 111 and 116. Thus, the Examiner has not met his burden of presenting a *prima facie* case of obviousness against claims 111 and 116.

#### V. The Dependent Claims

The dependent claims are allowable for the same reasons as the claims from which they depend. Applicants submit that the dependent claims are patentable for additional

reasons. While deemed unnecessary to argue these additional reasons at this time, given the arguments presented above, Applicants reserve the right to present such argument, including the interpretation of any terms of the claims, should it become necessary or desirable to do so.

VI. Conclusion

For the above reasons, Applicants submit that the pending claims are patentable over the references cited by the Examiner. Accordingly, reconsideration and allowance of the pending claims are respectfully solicited.

The Examiner is invited to contact the Applicants' undersigned representative at (646) 542-2932 to expedite prosecution.

Respectfully submitted,

By: /Ruth J. Ma/

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Ruth J. Ma  
Reg. No. 55,414  
Cantor Fitzgerald, LLP  
110 East 59<sup>th</sup> Street  
New York, NY 10022  
Tel. No. (646) 542-2932  
Fax. No. (947) 591-9257  
Attorney for Applicant